

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARTHUR CHING, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

No. C 09-2613 MMC

**ORDER DENYING PLAINTIFF'S MOTION  
TO STRIKE; GRANTING PLAINTIFF'S  
MOTION FOR LEAVE TO FILE SUR-  
REPLY; CONTINUING HEARING ON  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

Before the Court is plaintiff's Administrative Motion, filed April 7, 2010, to "Strike Portions of State Farm's Reply Memorandum in Support of its Motion for Summary Judgment or, in the Alternative, For Leave to File a Surreply." Defendant State Farm Mutual Automobile Insurance Company ("State Farm") has filed opposition. Having read and considered the administrative motion and opposition thereto, the Court rules as follows.

Plaintiff argues the Court should strike State Farm's reply to the extent it raises issues for the first time therein, and, in the alternative, that he is entitled to file a sur-reply to address those issues. The Court finds the parts of the reply identified as Section III, Subsection E, Parts 2 and 3 (see Reply at 9:21-12:11), are legal arguments made for the first time in State Farm's reply. The Court further finds such arguments were prompted by plaintiff's separate arguments, made in plaintiff's opposition, with respect to plaintiff's claim

1 under § 17200 of the California Business and Professions Code. Under such  
2 circumstances, the Court will deny the request to strike and will afford plaintiff leave to file a  
3 sur-reply addressing the arguments made in those two sections. As to Section III,  
4 Subsection E, Part 1 (see id. at 9:14-20), however, the Court finds the arguments made  
5 therein were not made for the first time in State Farm's reply, and, consequently, plaintiff is  
6 not entitled to file a sur-reply addressing that part of the reply.

7 Accordingly, to the extent plaintiff seeks to file a sur-reply addressing State Farm's  
8 arguments raised in Section III, Subsection E, Parts 2 and 3 of the reply, plaintiff's  
9 administrative motion is hereby GRANTED. Plaintiff's sur-reply shall be filed no later than  
10 April 21, 2010 and shall not exceed five pages in length. In all other respects the motion is  
11 hereby DENIED.

12 The hearing on defendant's Motion for Summary Judgment is hereby CONTINUED  
13 to May 7, 2010, at 9:00 a.m.

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15 **IT IS SO ORDERED.**

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17 Dated: April 13, 2010  
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MAXINE M. CHESNEY  
United States District Judge

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